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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 531

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, ET AL., *Petitioners*

v.

JOHN J. RYAN, THOMAS MONAGHAN AND CLIFFORD BECK, *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

LOUIS SHERMAN
1200 15th Street, N.W.
Washington, D.C.
LESTER ASHER
229 North LaSalle Street
Chicago, Illinois
BENJAMIN L. JACOBSON
CHARLES R. DONNENFELD
Attorneys for Petitioners

Of Counsel:
SHERMAN AND DUNN
1200 15th Street, N.W.
Washington, D.C.
ASHER, GREENFIELD, GUBBINS AND SEGALL
229 North LaSalle Street
Chicago, Illinois

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioners [1] pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered in the above entitled case on June 10, 1966.

Opinions Below

The initial opinion of the United States District Court for the Northern District of Illinois, dated December 17, 1964, and printed in Appendix C hereto, *infra*, p. 21-A, is unreported. The District Court's opinion of May 7, 1965,

[1] The Petitioners are: International Brotherhood of Electrical Workers; Local 134 of the International Brotherhood of Electrical Workers; J. W. Johnson, International Vice President, IBEW; Thomas J. Murray, President of Local 134, IBEW; Michael J. Kennedy, Business Manager of Local 134, IBEW; and Ralph Thompson, Chairman of the Executive Board of Local 134, IBEW.

following the filing of a motion to reconsider, is printed in Appendix C hereto, *infra*, p. 14-A, and reported in 241 F. Supp. 489. The opinion of the United States Court of Appeals for the Seventh Circuit, printed in Appendix C hereto, *infra*, p. 7-A, is reported in 361 F. 2d 942.

Jurisdiction

The judgment of the Court of Appeals was entered on June 10, 1966 (App. B, *infra*, p. 5-A. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Question Presented

Whether Section 101(a)(4) of the Act prohibits a labor organization from acting under a provision of its Constitution to impose sanctions on a member, after due notice and hearing, for instituting a civil suit in the courts before exhausting reasonable hearing procedures within such labor organization for a period of not more than four months.

Statute Involved

Section 101(a)(4) of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. § 411 (a)(4), provides as follows:

> "Section 101. (a)(4) PROTECTION OF THE RIGHT TO SUE.—No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided*, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: *And provided further*, That no interested employer or employer

association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition."

Sections 101(a)(5), (b) and § 102 which are also involved are printed in Appendix A, *infra*, pp. 3-A–4-A.

Statement

This is a suit under Title I of the LMRDA, 29 U.S.C. 401, *et seq.*, whereby Respondents (plaintiffs in the District Court) are seeking to set aside their expulsion from membership in the International Brotherhood of Electrical Workers, AFL-CIO, (hereinafter "IBEW") for violation of the Union's Constitution. The jurisdiction of the District Court was invoked under 29 U.S.C. § 412 and 28 U.S.C. § 1331.

Petitioners—IBEW, its Local 134, and officers of both the International and its Local—moved for summary judgment. The motion was denied by the District Court, but the Court of Appeals granted leave to appeal under 28 U.S.C. § 1292 (b) upon the District Court's finding that its decision "involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal may materially advance the ultimate determination of this litigation." (CA App. 113).[2] The Court of Appeals affirmed the District Court's decision.

There is no controversy over the facts in this case. Respondents, parimutuel clerks employed at race tracks in the Chicago area, were members and officers of the Parimutuel Clerks Unit of Local 134, IBEW (CA App. 72). In the summer of 1963, during the racing season, collective bargaining negotiations took place between a bargaining committee of Local 134 and representatives of the race track owners. When these negotiations failed to produce an agreement, the Unit voted to strike by a vote of 254 to 184 (CA App. 72-73).

[2] References noted as "CA App." are to the Appendix to Brief of Petitioners in the Court of Appeals.

On August 14, 1963, the Local Union Business Manager, pursuant to the strike vote, requested approval for strike action from the International President of the IBEW (CA App. 74). Such approval is required under Article XVII, Section 13, of the IBEW Constitution, which is binding on all IBEW members. The constitutional provision specifies that "no local union shall cause or allow a stoppage of work . . . before obtaining consent of the International President." The same section permits an appeal from the decision of the International President on the request for strike approval to the IBEW International Executive Council and to the International Convention (CA App. 12).

On August 15, 1963, the IBEW International President denied the request for permission to strike (CA App. 10) in a telegram which also stated that "L. U. 134 must first propose arbitration of all disputed items therewith and if Track Owners refuse to arbitrate please advise and your request will be reconsidered." (CA App. 75). The Business Manager then proceeded with the arbitration (Ibid).

On September 6, 1963, the individual Respondents filed a plea for writ of injunction in the United States District Court for the Northern District of Illinois seeking to restrain the local and its officers from "in any manner proceeding with negotiations by arbitration" with the employers (CA App. 78-82). This suit was dismissed by the Court on October 18, 1963, on Defendants' motion (CA App. 83). Respondents did not appeal the President's decision refusing strike permission to the IBEW International Executive Council which was holding its regular quarterly meeting in Washington September 9 to 13, 1963 (CA App. 97).

On September 30, 1963, the Business Manager of Local 134 filed charges against Respondents with the Local 134 Executive Board alleging violation of Article XXVII,

Section 1, of the IBEW Constitution. This section provides that:

> "Any member resorting to the courts for redress for any injustice which he may believe has been done him by the I.B.E.W. or any of its Local Unions, must first make use of the process available to him, including any appeal or appeals from any decision against him, which may be open to him within the IBEW and, failing to do so, he shall stand automatically expelled and without rights of any kind."[3]

The basis for the charges against Respondents was that

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[3] In accordance with the requirements of the Landrum-Griffin Act, the IBEW provided, by administrative practice, due notice and full hearing in cases of alleged violation of Article XXVII, Section 1, notwithstanding the automatic provisions thereof. See *Spaulding v. Douglas Aircraft Company*, 154 F.2d 419, 426 (9 Cir. 1946). Nor was the section interpreted by the Union as requiring automatic expulsion in the event of violation. In a similar case involving charges based on resort to court without exhausting internal remedies, the IBEW Executive Council, in a decision dated September 16, 1960, did not apply any sanctions against the members after a full hearing had been accorded even though the suit was filed prior to the expiration of the statutory four-month period. See *Parks v. IBEW*, 314 F.2d 886, 896 at note 10 (4 Cir. 1963), *cert. den.* 372 U.S. 976 (1963).

It should be noted that Section 101(a)(4) proscribes conduct; it does not require changes in the terminology of the union constitution. The original version of the Bill of Rights in S. 1137 introduced by Senator McClellan on February 19, 1959, would have required the insertion of appropriate provisions in union constitutions protecting the right to sue. I Leg. Hist. LMRDA, pp. 267-268, 269-270. But this approach was dropped in later stages of the legislative process. See the McClellan Bill of Rights amendment to S. 1555 offered April 22, 1959, II Leg. Hist. LMRDA p. 1102, the substitute amendment offered by Senator Kuchel April 24, 1959, *Ibid.* pp. 1220-21 and the final version of the Act. When Congress intended a change in constitutional language, as in Title IV relating to election and terms of office, it established a time schedule based upon available amendment procedures and empowered the Executive Board to make changes between conventions. See Act, Sec. 404. The Court of Appeals below in applying Sections 101(a)(4) and 101(b) of the Act accepted the Union's construction of its constitution. (App. C, *infra*, p. 13-A) Neither it nor the District Court accepted Respondents' literalistic position.

they had resorted to the courts before pursuing internal union remedies (CA App. 7-8).

Notwithstanding the IBEW Constitution's reference to "automatic" expulsion, the Respondents were afforded the procedural protections of Section 101(a)(5). As found by the Court of Appeals "They [Respondents] were given copies of the charges and notice of hearing, and accorded a full hearing with opportunity to appeal, were found guilty and expelled from membership."

Respondents appealed these decisions to the International Vice President and then to the International President who, finding that he could not under the circumstances of this case disagree with the trial body's exercise of its discretion in imposing the penalty, affirmed the expulsion orders (CA App. 76-77). Respondents then instituted the present suit in the District Court against Petitioners.

The District Court set aside the expulsion from membership on the ground that, since there are exceptional cases in which the doctrine of exhaustion of internal union remedies is not a defense to a members' suit, therefore, "any member could bring suit for determination whether he had an exceptional case, with impunity against union discipline for violation of the constitutional provision." (App. C *infra*, pp. 8-A–9-A)

The Court of Appeals affirmed. It agreed with the position of the lower court even with respect to cases, such as the instant one, where the members' suit against the union is not exceptional and is dismissed.

Reasons for Granting the Writ

The Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court.

The effect of the decision of the court below is, virtually, to nullify the provisions of every union constitution which authorize discipline of members for premature resort to the courts.

Many union constitutions, applicable to millions of members, provide for such discipline. The United States Department of Labor Bureau of Labor Statistics Bulletin No. 1350 entitled "Disciplinary Powers and Procedures in Union Constitutions" issued May, 1963, states that a study of union constitutions after the effective date of the Landrum-Griffin Act showed that:

> "Premature resort to civil courts, considered by some to be a flagrant display of disloyalty, was specifically prohibited in 64 constitutions. The grave consequences of this conduct were also illustrated by the number of times it appeared as a ground for summary discipline, as noted in chapter II." (at p. 32)

The Bureau of Labor Statistics study shows that unions adjusted to the "protection of the right to sue" provisions of the Act (Section 101(a)(4) by two methods:

(1) "Fifteen of the constitutions studied, covering more than 2 million members, had changes designed to conform with this provision". (at p. 156). A typical change was to limit, by explicit language, the application of discipline by the following language: "Provided that a member or officer shall not be subject to any charges hereunder if he has exhausted his remedies for a period not to exceed four months." *(Ibid.)*; and

(2) By changing administrative practice in these cases without explicit change in constitutional language (see *id.* at p. 157).

Other unions which have not explicitly written the four month proviso into their constitutions include the Steelworkers and the UAW. The Constitution adopted September 23, 1960, by the Steelworkers (membership approximately 1,000,000) provides that "Any member may be penalized for . . . instituting, or urging, or advocating that a member of any Local Union institute action outside the Union against the International Union, Local Union or any of their officers without first exhausting all remedies through the forms of appeal of the International Union"

(Article XII, Sec. 1, pp. 63-64). Any member convicted of this offense "may be fined, suspended, or expelled" (Article XII, Sec. 2, p. 64). The Steelworkers Constitution adopted September 23, 1964, repeats the above provisions (pp. 65-67).

The Constitution of the United Automobile Workers adopted March, 1964, (membership approximately 1,100,000) provides that:

> "It shall be the duty of any member or subordinate body who feels aggrieved by any action, decision, or penalty imposed upon him or it, to exhaust his or its remedy and all appeals therefrom under the laws of this International Union prior to appealing to a civil court or governmental agency for redress. Failure to comply with this duty shall be cause for suspension or expulsion, or for revocation of charter, by a two-thirds (2/3) vote of the International Executive Board insofar as imposition of any such penalty is not inconsistent with any applicable laws." (Article 32, Sec. 13, at p. 62)

Except for the possibility that there might be a different result if it is proved that the member's suit was instituted for purposes of harassment (App. C at p. 13-A), the court below has ruled out all the adjustments which the unions have made to Section 101(a)(4) of the Landrum-Griffin Act, whether by change in constitutional language or by change in administrative practice. The court's decision eliminates disciplinary power in the union in cases where the member's suit would come within an exception to the exhaustion of internal remedies defense; it has also eliminated such power where the member's suit is subject to the exhaustion of administrative remedies and is not exceptional.

By its nullification of even the limited disciplinary power which we believe Congress intended to leave with the unions in the first proviso to Section 101(a)(4) of the Act, the ruling of the court below creates great difficulties in the

administration of the internal affairs of unions. The long continued and widespread existence of the disciplinary clause in union constitutions shows that many conventions of different types of unions have deemed such clauses a necessary ingredient in the proper regulation of the complex interrelationships of individual members, factions of members, the local unions, other subordinate bodies and the international unions. The unsettling of these clauses can reasonably be expected to increase turmoil within labor organizations.

In addition to the effect of the ruling of the court below on the administration of internal union affairs,[4] there is also involved the question of its relationship to the power of the international union to encourage the peaceful settlement of labor disputes without work stoppages.

Although the plea for writ of injunction to restrain the arbitration in this case was in form a suit by three international officers and members of the Local, actually, it was a strategic move in the group conflict within the Unit and between the Unit and the International. Respondents did not seek an injunction to restrain the Local and its officers "from in any manner proceeding with negotiations by arbitration" (CA App. 81) to freeze the existing terms and conditions of employment as to which Respondents and their followers were complaining. It must have been Respondents' hope that the institution of the court action to stop the arbitration would have the effect of strengthening the resolve of the majority (254) who had voted for the strike; to gain supporters from the ranks of the minority (184) who had voted against the strike and to persuade the International President to reconsider his refusal to grant strike permission. If the suit to block the arbitration had been successful, a situation would have

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[4] See the reference in *Calhoon v. Harvey*, 379 U.S. 134, 140 (1964), to "the general congressional policy to allow unions great latitude in resolving their own internal controversies . . ."

been created within the Unit whereby there would be no way to resolve the labor dispute over changes in the terms and conditions of employment within a reasonable time except by way of work stoppage.

The District Court could adjudicate the question of whether the arbirtation should be restrained; it was obviously not the proper forum to decide whether the Local should arbitrate or strike. That was an issue for the International President subject to appeal to the International Executive Council. The application to the courts by Respondents, without even attempting to utilize the available internal procedures of the union, could have adversely affected the union's power to decide this internal union question even though the district court denied the injunction.

Rule 62(c) of the Federal Rules of Civil Procedure provides in pertinent part that:

> "When an appeal is taken from an interlocutory or final judgment granting, dissolving, or *denying* an injunction, the court *in its discretion* may suspend, modify, restore, or *grant* an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party." (Italics supplied)

That the grant of an injunction under the above rule would not have been a remote contingency in the event of an appeal, is demonstrated by the procedural course of *Berryman et al. v. IBEW*, —— Nev. ——, P.2d —— (Sup. Ct. Nev. 1966); 54 L.C. ¶ 51,518. In that case, the trial court denied an injunction to restrain a union disciplinary hearing because the case did not warrant an exception from the rule requiring exhaustion of internal union remedies. The trial court, however, on November 23, 1965, granted an injunction pending appeal under a rule of procedure in Nevada which is the same as Federal Rule 62(c) quoted above. (Docket No. 224117 in the Sec-

ond Judicial District Court of the State of Nevada, County of Washoe, Bowen, J.) The injunction pending appeal remained in effect until July 11, 1966, when the Supreme Court of Nevada affirmed the lower court's denial of the injunction on the merits of the case.

We contend that Congress in enacting Section 101(a)(4) and its first proviso intended to effect a compromise between the member's right of access to the courts and the then existing union constitutions providing for discipline if a member sued in court before exhausting available internal union remedies. Congress, in this view, struck the balance by allowing unions to require exhaustion of internal remedies for a period not exceeding four months before the member could institute court action. The ruling of the court below, in giving the member an absolute right of access to the court in derogation of the authority of all processes whereby unions make decisions, diminishes the power of the union to act responsibly in labor management situations.

Union leaders have expressed concern as to the effect of the Landrum-Griffin Act on their power to act responsibly. That these expressions are not made merely by persons seeking to escape reasonable Government regulation is evidenced by a recent statement of William E. Simkin, Director of the Federal Mediation and Conciliation Service. Mr. Simkin, on August 28, 1966, predicted more difficult labor disputes in the future and in listing the factors making current labor-management settlements harder to handle gave "some credence to the fears of union leaders" that Congress, in passing the Landrum-Griffin Act "to restore more democracy to unionism and curb bossism went too far in the other direction of encouraging rebel movements." (New York Times, August 29, 1966, page 38, column 4.)

This petition is obviously not presented to challenge the Congressional solution of the problem which is the

subject of this case. We believe, however, that the ruling of the court below is in conflict with the Congressional intention in this matter as manifested by the language of the statute and its legislative history. We also believe that the ruling will have seriously detrimental consequences on the proper administration of internal union affairs and the power of unions to act responsibly in labor management disputes.

It is respectfully submitted that the text of Section 101 (a)(4) establishes a prohibition directed against the action of labor organizations in limiting a member's right to sue with two exceptions. The first proviso states that "any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: . . ." The second proviso states "That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition."

Since the prohibition in Section 101(a)(4) is directed to the "labor organization", it would appear that it is also the "labor organization which may require the member to exhaust reasonable hearing procedures for four months before instituting suit. Ordinary rules of construction call for interpretation of a proviso as an exception from the scope of the prohibition. See *NLRB v. Servette, Inc.*, 377 U.S. 46, 55 (1964).

It is further submitted that the first and second provisos were intended to have the same function in the section of the statute here involved. Can there be any question but that a union is authorized by the second proviso to discipline a union member who files a suit against the union in collusion with an employer who directly or indirectly finances such suit? If the second proviso is properly construed as an exception to the prohibition against a labor

organizations' limitation of the member's right to sue, the first proviso should be given similar effect.

The court below did not enter upon a discussion or analysis of the meaning of the first proviso or the effect of the second proviso. It is respectfully submitted that the decision below is erroneous in failing to construe all of Section 101(a)(4) together, including the provisos.

Other court decisions have advanced the theory that the first proviso is directed to the courts and merely states a rule of judicial administration. See *Detroy v. American Guild of Variety Artists*, 286 F.2d 75 (2 Cir. 1961), *cert. den.* 366 U.S. 926 (1961).

Such an interpretation is not consistent with the language of Section 101(a)(4) as discussed above. It is also inconsistent with the legislative history. On September 3, 1959, Senator John F. Kennedy delivered the report of the Committee of Conference on the disagreeing votes of the two Houses on the amendment of the House to S. 1555. He explained that the right to sue provision originated in the Senate Bill and was adopted verbatim by the House in the Landrum-Griffin Bill except that the period of time was changed from 6 months to 4 months. Senator Kennedy then stated that:

> "The 4-month limitation in the House bill also relates to *restrictions imposed by unions rather than the rules of judicial administration* or the action of Government agencies." (Italics supplied.) II Legis. Hist. L.M.R.D.A. 1432.[5]

If the 4-month rule were directed to the courts, it would have invalidated many decisions which allowed exhaustion of internal union remedies as a defense for longer periods of time. Such a result was negated when Senator Kennedy stated:

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[5] The above quoted statement at the end of the legislative process is consistent with the original version of the Bill of Rights introduced by Senator McClellan as part of S. 1137. Section 101(6) of S. 1137 provided as follows:

"Nor is it the intent or purpose of the provision to invalidate the considerable body of State and Federal court decisions of many years standing which require or do not require, the exhaustion of internal remedies prior to court intervention *depending upon the reasonableness of such requirements in terms of the facts and circumstances of a particular case.*" (Italics supplied.) (*Ibid.*)

The decision below is also inconsistent with the principle of Circuit Judge Hastie's concurring opinion in *Sheridan v. Carpenters, Local 626,* 306 F.2d, 152, 160 (3 Cir. 1962). Judge Hastie stated his interpretation of the first proviso as follows:

"The limiting proviso in Section 101(a)(4) states that a union member 'may be required' to exhaust intra-union procedures before resorting to litigation.

"Sec. 101. The constitution and bylaws or other governing charter of every labor organization shall contain provisions effectively designed to carry out the following objectives and to guarantee to its members the following rights:

* * *

"(6) PROTECTION OF THE RIGHT TO SUE.—No labor organization shall limit the right of any member or officer thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendents or respondents in such action or proceeding, or the right of any member or officer of such labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided,* That any such member or officer may be required to exhaust reasonable hearing procedures within such organization, not requiring longer than three months to final decision, before instituting legal or administrative proceedings against such organization or any officer thereof." I Legis. Hist. LMRDA 267-270.

It is obvious from the foregoing that neither the original draft nor the final version of the "right to sue protection" intended the time proviso as a rule of judicial administration. As noted, *supra,* p. 5 Footnote 4, the McClellan amendment offered April 22, 1959, dropped the requirement in his original bill for changes in the provisions of union constitutions.

It does not say who may impose that requirement. But the principal matter in the subsection is a prohibition against union interference with resort by its members to the courts, and that prohibition is qualified by the proviso stipulating that the exhaustion of reasonable intra-union remedies may be required. It is reasonable to read both the general restriction and its qualification as statements of what a union may or may not do. Indeed, I think any other reading of the language is artificial and unwarranted. In effect, Congress has said that a union may not restrict a member's resort to the courts except that it may require that the member first devote not more than four months to reasonable grievance procedures within the organization."

It should be noted that the instant case involves a member's private civil suit against the union; it does not involve the application of union discipline for instituting a "public rights" proceeding such as an unfair labor practice case before the National Labor Relations Board. The latter situation was before the United States Court of Appeals for the District of Columbia in *Roberts v. NLRB*, 350 F.2d 427 (D.C. Cir. 1965), which held that such conduct was in violation of Section 8(b)(1)(A) of the Taft-Hartley Act and that Section 101(a)(4) of the Landrum-Griffin Act did not affect this holding. The applicable provision in the IBEW Constitution (Article XXVII, Section 1) is limited strictly to actions in courts of law. A resolution was offered to the 58th Convention of the IBEW to extend the provision to cases instituted before such regulatory agencies as the National Labor Relations Board. The printed proceedings of the Convention show that the resolution was reviewed by the Law Committee, which non-concurred, and that the Convention rejected the resolution. The stated reason for this was the distinction beween actions in a court of law and proceedings where the United States Government or its agencies are the complainants. (*Printed proceedings of the 26th Convention, International Brother-*

hood of Electrical Workers (AFL-CIO) Cleveland, Ohio, September 30-October 3, 1958, pages 466 to 467).

Petitioners presented to the Court of Appeals an alternative position in addition to their main argument as set forth in the preceding sections of this petition. Petitioners contended that even if the lower court was right in concluding that unions could not apply discipline where the member's suit represented an exception from the doctrine requiring exhaustion of internal remedies, the facts were that the members' suit against the union in this case was not exceptional and was dismissed by the District Court. The Court of Appeals did not find that such suit presented an "exceptional case" but took the view that petitioner's alternative position would make the filing of a suit "too chancy a gamble for the member" and that:

> "Congress cannot have intended to burden the protection it gave union members, in their right to sue in the 'Bill of Rights' of the LMRDA, with the hazard that is clear in defendants' claim. The right of free access to our courts is too precious a right to be curbed by the risky prediction that the judge's discretion may, like a lucky roll of dice, turn up in favor of the suitor." (App. C. *infra* pp. 12-A to 13-A)

It is respectfully submitted that there is no language in the statute warranting a departure from the ordinary rule that knowledge of the law is presumed. It may also be noted that where Congress has sought to relieve private parties from the inevitable uncertainties of the law (as reflected by Judge Holmes' comment that all law is essentially an essay in prophecy) it has usually done so by specific provision. See Portal to Portal Act of 1947, 29 U.S.C. § 258.

Extension of the principle implicit in the ruling of the Court of Appeals on this point would require substantial revision of the law in other areas. Cf. the general rule that mistaken notions about one's legal rights are not

sufficient even to bar prosecution of crime, *Annotation*, 56 ALR 2d 916, 920-928.

It should also be noted that Congress barred union discipline in most of the usual "exceptions" from the exhaustion of remedies doctrine when it made such discipline impermissible in cases where the delay in internal proceedings exceeded four months and where there were no reasonable hearing procedures, including lack of due process as defined in Section 101 (a)(5).

Conclusion

For the foregoing reasons, it is respectfully submitted that a writ of certiorari should be granted.

LOUIS SHERMAN
1200-15th Street, N. W.
Washington, D. C.
LESTER ASHER
229 North LaSalle Street
Chicago, Illinois
BENJAMIN L. JACOBSON
CHARLES R. DONNENFELD
Attorneys for Petitioners

Of Counsel:
SHERMAN AND DUNN
1200-15th Street, N.W.
Washington, D. C.
ASHER, GREENFIELD, GUBBINS AND SEGALL
229 North LaSalle Street
Chicago, Illinois

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Appendix A

STATUTORY PROVISIONS

Labor-Management Reporting and Disclosure Act of 1959 (Public Law 86-257, 86th Congress, S. 1555, September 14, 1959); 29 USC § 411(a)(4), (a)(5) and (b); § 412.

Section 101(a)(4)

"(4) PROTECTION OF THE RIGHT TO SUE—No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided,* That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: *And Provided further,* That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition."

Section 101(a)(5)

"(5) SAFEGUARDS AGAINST IMPROPER DISCIPLINARY ACTION—No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof, unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing."

Section 101(b)

"(b) Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect."

Section 102

"Sec. 102. Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located."

Appendix B

JUDGMENT OF THE COURT BELOW

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS

Friday, June 10, 1966

Before

Hon. F. Ryan Duffy, Circuit Judge

Hon. Latham Castle, Circuit Judge

Hon. Roger J. Kiley, Circuit Judge

JOHN J. RYAN, THOMAS MONAGHAN and CLIFFORD J. BECK,
Plaintiffs-Appellees,

No. 15259 vs.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS et al.,
Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

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This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the opinion of this Court filed this day.

I, KENNETH J. CARRICK, Clerk of the United States Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of opinion filed June 10, 1966 and judgment entered June 10, 1966 in

Cause No. 15259

John J. Ryan et al

vs.

International Brotherhood of Electrical Workers et al

as the same remains upon the files and records of the United States Court of Appeals for the Seventh Circuit.

IN TESTIMONY WHEREOF I hereunto subscribe my name and affix the seal of said United States Court of Appeals for the Seventh Circuit, at the City of Chicago this 22nd day of July A.D. 1966.

(SEAL)

/s/ Kenneth J. Carrick

Clerk of the United States Court of Appeals for the Seventh Circuit."

Appendix C

DECISIONS OF THE COURTS BELOW

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

SEPTEMBER TERM, 1965—APRIL SESSION, 1966

No. 15259 *

JOHN J. RYAN, THOMAS MONAGHAN and CLIFFORD J. BECK,
Plaintiffs-Appellees,
v.
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; LOCAL 134 of the INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; J. W. JOHNSON, INTERNATIONAL VICE-PRESIDENT, IBEW; THOMAS J. MURRAY, PRESIDENT OF LOCAL 134, IBEW; and RALPH THOMPSON, CHAIRMAN OF THE EXECUTIVE BOARD OF LOCAL 134, IBEW,
Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

June 10, 1966

Before DUFFY, CASTLE and KILEY, *Circuit Judges.*

KILEY, *Circuit Judge.* Defendants appeal from a summary judgment[1] which decided that plaintiffs were un-

[1] Plaintiffs' suit seeks both injunctive relief and damages; summary judgment was granted "as to liability." We granted leave to appeal under 28 U.S.C. § 1292(b) upon the district court's certificate that a controlling question of law as to which there is substantial ground for difference of opinion is involved.

* 361 F.2d 942; 53 LC ¶ 11,283.

lawfully expelled from membership in Local 134 for violation of a provision of the International Union's constitution, which the district court found invalid as violating the "Bill of Rights" of members of labor organizations in the Labor-Management Reporting and Disclosure Act (LMRDA) of 1959. *Ryan v. International Brotherhood of Electrical Wkrs.*, 241 F.Supp. 489 (N.D. Ill. 1965). We affirm.

There is no controversy over the facts: Plaintiffs were pari-mutuel clerks employed at race tracks in the Chicago area and were members and officers of the Pari-Mutuel Clerks Unit of Local 134. In the summer of 1963 negotiations between a committee of the Unit and a representative of the track owners failed to reach a new bargaining agreement, and the Unit voted to strike.

In accordance with the International's constitution,[2] binding on all members of local unions, Local 134, on behalf of the Unit, sought, on August 14, 1963, permission of the International President to conduct the strike. Permission was denied on August 15, and the Local was remitted to the compulsory arbitration procedure of the existing agreement, over plaintiffs' objection that the agreement did not require the Local to arbitrate. Plaintiffs did not appeal this decision to the Executive Council or Convention, which is permitted by Section 13 of Article XVII. The Local submitted to arbitration, but plaintiffs on September 6, 1963 filed suit in the District Court for the Northern District of Illinois, seeking to enjoin the arbitration. That suit was dismissed on defendant's motion on October 18, 1963. In the meantime, charges were filed against plaintiffs with the Executive Board of the Local, resulting in their expulsion. They

[2] Article XVII, Section 13, provides that no local union "shall cause or allow a stoppage of work in any controversy of a general nature before obtaining consent" of the International President. This section also provides that the President's decision is appealable to the International's Executive Council and its Convention.

were given copies of the charges and notice of hearing, and accorded a full hearing with opportunity to defend, were found guilty and expelled from membership. Pursuant to the International constitution, plaintiffs appealed these decisions to the International Vice-President, and subsequently to the International President, who affirmed the expulsion decisions on March 30, 1964.

Plaintiffs were expelled because, by filing their suit of September 6, 1963 to enjoin the arbitration, they did not comply with Article XXVII, Section 1, of the International constitution, which provides:

> Misconduct, Offenses and Penalties
>
> Sec. 1. Any member resorting to the courts for redress for any injustice which he may believe has been done him by the I.B.E.W. or any of its [Local Unions], must first make use of the process available to him, including any appeal or appeals from any decision against him, which may be open to him within the I.B.E.W. and, failing to do so, he shall stand automatically expelled and without rights of any kind.

They filed this suit and the judgment before us followed.

The essence of the amended complaint is that it would take "a minimum of time far in excess of four months" to properly utilize the International's process of appeal, therefore making Article XXVII, Section 1, inconsistent with Section 101(a)(4) of the LMRDA of 1959, 29 U.S.C. § 411(a)(4), which provides in part:

> (4) Protection of the right to sue.—No labor organization shall limit the right of any member thereof to institute an action in any court, . . . irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, . . . *Provided,* That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal . . . proceedings against such organization or any officer thereof. . . .

and that the constitutional provision is therefore void, under Section 101(b) of the LMRDA, 29 U.S.C. § 411 (b), which makes "any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section . . . of no force and effect."[3]

Thus, the issue for decision is, as it was for the district court, whether Article XXVII, Section 1 of the International constitution can properly be the basis for the union discipline here involved.

The district court held that Section 1 of Article XXVII is of "no force or effect to the extent that it provides for the expulsion of a member because he brings a suit in court." The court thought that the term "may be required" in the proviso of Section 101(a)(4) of the LMRDA implied that a suit could be brought in some circumstances (*e.g.*, where the action complained of is "void") prior to the expiration of a four month period; that these justifying circumstances could be determined only by bringing suit to see if the court will accept the case; and that an automatic expulsion of members for bringing suit "would be" arbitrary in view of Section 101 of the LMRDA.

Plaintiffs contend that the appellate procedures in the union constitution were unreasonable because they provided for automatic expulsion if all procedures were not exhausted, and that since the ultimate appeal might take four years because the International Convention was not required to meet except every four years, the four month limitation of Section 101(a)(4) is violated and the constitutional provision of no force and effect.

The district court did not rest its decision upon that contention. The court in substance decided that the pro-

[3] Section 102 of the Act, 29 U.S.C. § 412, allows any person whose rights, secured by this subchapter, have been infringed by a violation of the subchapter to bring an action "for such relief (including injunctions) as may be appropriate."

vision of the union constitution was offensive to Section 101(a)(4), 29 U.S.C. § 411 (a)(4), because it provided for expulsion even if a member brought suit as a necessary step to determination whether he had an "exceptional case" lying beyond the reach of the required exhaustion of remedy provision. In other words, the court presumably had the opinion that any member could bring suit for determination whether he had an exceptional case, with impunity against union discipline for violation of the constitutional provision.

The question before us, therefore, is whether the protected right of a union member to sue his union, or its officers, may be so subjected to appellate procedures and rules by the union constitution that a member risks expulsion by merely seeking a court's determination that he has a case not subject to the regulations in the union constitution. The parties have not referred us to any case, nor have we found any, which has decided the question.

The Union admits that courts may, when the rule of exhaustion of remedies is posed as a defense to a member's suit, exercise discretion whether to require that internal union remedies be exhausted. The Union claims, however, that it has the right to discipline a member by expulsion should a member bring a suit without having first exhausted reasonable union procedures for review. In other words, that the Union may expel a member for bringing a suit if the court's discretion is exercised in favor of the defense of exhaustion of remedies and the suit dismissed as premature.[4]

The Second Circuit in *Detroy v. American Guild of Variety Artists*, 286 F.2d 75 (2d Cir.), *cert. denied*, 366 U.S. 929 (1961), and the Third Circuit in *Harris v.*

[4] A reference to § 1 of Article 27 of the International's constitution in the body of this opinion will show that the claim of the Union made here is narrower than the broad language of the provision itself would accommodate.

International Longshoremen's Ass'n, Local 1291, 321 F.2d 801 (3rd Cir. 1963), decided appeals from judgments dismissing suits of members, under Section 101 of the LMRDA, for failure to exhaust appellate remedies provided in union constitutions. In *Detroy* the district court's dismissal of a member's suit for prematurity was reversed; in *Harris* the district court's dismissal of a member's suit for the same reason was affirmed. These cases illustrate the Union's admission that courts have discretion whether a member's suit will, or will not, be entertained depending upon the circustances of the case presented.[5] The suit in this case, filing of which resulted in plaintiffs' expulsion, was similar to those in *Detroy* and *Harris* in so far as it too was filed without exhausting remedies in the constitution. But the case now before us is different from them and the question presented to us unique because the Union claims the right to expel the member upon the fortuitous event that the suit he presents is not exceptional and is dismissed.[6]

This claim of the Union, it seems to us, makes a member's bring of a suit against a union or its officers to chancy a gamble for the member and effectually blocks access to the courts by placing the member in the dilemma of swallowing the grievance about which he wishes to sue (and against which the court might grant

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[5] Besides these cases, and others relied on by the court below, 241 F.Supp. at 492-93, several other cases also consider the relationship between the exhaustion doctrine and the protections of the "Bill of Rights" in the LMRDA: *e.g., Simmons v. Avisco, Local 713, Textile Workers Union,* 350 F.2d 1012, 1016-17 (4th Cir. 1965); *McCraw v. United Ass'n of Journeymen,* 341 F.2d 705, 711 (6th Cir. 1965); *Sheridan v. United Brotherhood of Carpenters,* 306 F.2d 152 (3rd Cir. 1962) (concurring and dissenting opinions); and *Thompson v. New York Central Railroad Co.,* 250 F. Supp. 175, 176-77 (S.D. NY 1966).

[6] It does not appear from the record before us why the plaintiffs' suit of Sept. 6, 1963, was dismissed. Defendants inform us that "failure to exhaust" was a principal ground relied on in the motion to dismiss. Counsel for plaintiffs, on oral argument, asserted it was dismissed for mootness.

immediate and necessary relief), or suing upon the speculation that he will be safe from expulsion by the court's discretion being exercised in his favor.

Congress cannot have intended to burden the protection it gave union members, in their right to sue in the "Bill of Rights" of the LMRDA, with the hazard that is clear in defendants' claim. The right of free access to our courts is too precious a right to be curbed by the risky prediction that the judge's discretion may, like a lucky roll of dice, turn up in favor of the suitor.

We hold that the Union constitution provision, Section 1 of Article XXVII, as construed by the Union, is inconsistent with Section 101(a)(4) of the LMRDA, 29 U.S.C. § 411(a)(4), and is of no force and effect under Section 101(b) of the Act, 29 U.S.C. § 411(b), and that plaintiffs' expulsion, predicated solely upon their violation of that Union provision, *i.e.*, for bringing suit to restrain Local 134 from arbitrating the dispute without resort to the Union internal remedies, is unlawful, and that the district court did not err in setting the expulsion aside.

Our conclusion is kindred to that of the Court of Appeals of the District of Columbia in affirming, in *Roberts v. NLRB,* 350 F.2d 427 (D.C. Cir. 1965), the Board's decision that a union was guilty of an unfair labor practice in fining a member for filing charges before the Board without having exhausted internal union remedies. This conduct was said to be an attempt to regulate "members' access to the Board's processes." A different conclusion could result where a member resorts to suit for purposes of harrassment. See *Roberts v. NLRB,* 350 F.2d at 430.

The judgment is affirmed.

A true Copy:
Teste:

.....
Clerk of the United States Court of Appeals for the Seventh Circuit.

IN THE

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

JOHN J. RYAN, et al.,
Plaintiffs.

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, etc., et al.,
Defendants.

No. 64 C 1238*

MEMORANDUM OPINION

This suit, for an injunction and damages, is being brought by three former members of the International Brotherhood of Electrical Workers (I.B.E.W.), Local Union #134 of the International Brotherhood of Electrical Workers (Local 134 and several individuals in their official capacities with either the I.E.B.W. or Local 134.

The complaint alleges that the plaintiffs were expelled from the I.B.E.W. and Local 134 in a manner which violates the plaintiffs' rights under Section 102 of the Labor Management Reporting and Disclosure Act of 1959, Public Law 86-257, 29 U.S.C. §§ 401, 402, 411 and 412. As alleged, the basis for the expulsions was violation of Article XXVII, Section 1 of the I.B.E.W. Constitution, which is a part of the by-laws of Local 134; this Article reads as follows;

> "Any member resorting to the courts for redress for any injustice which he may believe has been done him by the I.B.E.W. or any of its L.U.'s, must first make use of the process available to him, including any appeal or appeals from any decision against him, which

* 241 F. supp. 489

may be open to him within the I.B.E.W. and, failing to do so, he shall stand automatically expelled and without rights of any kind."

The plaintiffs allege that Article XXVII, Section 1, violates their rights under 29 U.S.C. § 411(a)(4), which provides, in part, the following:

> "No labor organization shall limit the right of any member thereof to institute an action in any court . . .: *Provided,* That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof. . . ."

29 U.S.C. § 411(b) provides:

> "Any provision of the constitution and by-laws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect."

The defendants have moved to dismiss the complaint. The plaintiffs have moved for summary judgment on the issue of liability. The undisputed facts upon which this action is based are set forth in the affidavit of Russell H. Olson, Assistant to the President of the defendant I.B.E.W.; these facts are the following:

1. Plaintiffs were pari-mutuel clerks working at race tracks in the Chicago area; they were officers and members of the Pari-mutuel Clerks Unit of Local Union 134, I.B.E.W.

2. In the summer of 1963, a negotiation committee from the Pari-mutuel Clerks Unit was attempting to negotiate a new agreement with a representative of the race track owners.

3. By a vote of its membership, the local unit rejected the proposals made by the representative and, finally, voted to strike.

4. On August 14, 1963, in accordance with the I.B.E.W.'s constitution, the local unit sought the permission of the International President to strike; this permission was denied on August 15, 1963.

5. At the same time, it was determined that the local was required to submit to compulsory arbirtation, as provided in the existing collective bargaining agreement. The plaintiffs contended that the existing agreement did not require the local to arbitrate. This contention was made to, and was denied by, the parent union, the International Vice President of the Sixth District, and the International President.

6. On September 6, 1963, as the local was being engaged in compulsory arbitration, the plaintiffs filed their suit in the District Court for the Northern District of Illinois against Local 134 and its officers. This suit asked that the Court enjoin the defendants from proceeding with the arbirtation, which the plaintiffs claimed was unauthorized. Judge Perry considered the complaint and dismissed it on defendants' motion.

7. In their appeals from the decision of expulsion, the plaintiffs stated to the International President that, if they had gone through all of the appellate procedures of the local union and of the I.B.E.W. before bringing the suit for an injunction, then the arbirtation would have ended and a new contract would have been formed.

8. The plaintiffs were expelled from the Union for violating Article XXVII, Section 1 of the International Constitution after hearings were conducted by the Executive Board of the Local Union. The expulsions were affirmed upon appeals to the International Vice President and to the International President.

The issue before the Court is the validity of Article XXVII, Section 1. The plaintiffs take the position that the Article cannot be the basis for their expulsion from the Union because it violates their rights under 29 U.S.C.

§§ 401 *et seq.* The defendants have moved to dismiss the complaint, arguing that the Article is valid; therefore, pleading expulsion under Article XXVII, Section 1, does not state a claim upon which relief could be granted. F.R.C.P. 12(b)(6).

The defendants contend that Article XXVII, Section 1, when read in conjunction with the statute, requires the plaintiff to exhaust their internal union remedies for four months only; that the union rule is invalid only insofar as it can be violated by an extra-union proceeding after the four month period. On this basis, the defendants contend that Article XXVII, Section 1, is a valid and enforceable regulation.

On the other hand, the plaintiffs argue that Article XXVII, Section 1, is wholly invalid because, by its terms, it requires the plaintiffs to exhaust *all* of their internal remedies without limiting the time to four months. The plaintiffs contend that, since Article XXVII, Section 1, has not been amended so that it fits within the statutory language, the violation of a void by-law cannot be the basis for their expulsion.

I have examined the statute, the legislative history, and the cases, and am of the opinion that Article XXVII, Section 1, cannot be the basis for the expulsion of a member and is invalid; however, my reasons are other than those presented by the parties.

29 U.S.C. § 411 is known as the "Bill of Rights." The purpose of this legislation is apparent: to protect certain rights of union members by providing the member with access to the courts for the redress of a violation of the rights which are secured. See 29 U.S.C. § 412. Nevertheless, it was thought appropriate to give the union a chance, through internal procedures, to resolve its own problems. See 2 NLRB, Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, page 1432 (Statement by Senator John F. Kennedy). Therefore,

although one of the "rights" which the union member gained in Section 412 is the right to seek extra-union relief, that right is not absolute.

The four-month period is not an unvarying jurisdictional limitation. The statute says that the union member "*may* be required to exhaust . . ." internal remedies. (Emphasis added.) Situations can arise when the union member will be allowed to bring suit prior to the expiration of a four-month period; as Chief Judge Lumbard said, in *Libutti v. Di Brizzi*, 337 F.2d 216 (2d Cir. 1964):

> "Section 101(a)(4) expressly incorporates the common law principle that a dispute between a union or other private association and one of its members should in general first be submitted to the association's own tribunals. But neither at common law nor under § 101 is this principle absolute, Detroy v. American Guild of Variety Artists, 286 F.2d 75 (2 Cir.), cert. denied, 366 U.S. 929, 81 S.Ct. 1650, 6L.Ed. 2d 388 (1961), and included among the traditional exceptions is the situation in which the action complained of is "void." Shapiro v. Gehlman, 244 App. Div. 238, 278 N.Y.S. 785 (1935); Summers, Legal Limitations on Union Discipline, 64 Harv.L.Rev. 1049, 1089 (1951).
>
> "Voidness is an elastic concept. Because it is tied up with the merits of the claim, its indiscriminate application could reduce the exhaustion requirement to the tautology that a plaintiff can find present relief in the courts only if his claim has legal merit. See Summers, op.cit.supra, at 1091. That this is a danger, however, does not mean that it is an inevitable result of applying the exception. When conceded or easily determined facts show a serious violation of the plaintiff's rights, the reasons for requiring exhaustion are absent: the commitment of judicial resources is not great; the risk of misconstruing procedures unfamiliar to the court is slight; a sufficient remedy given by the union tribunal would have to approximate that offered by the court. Where, as in this case, conceded facts

> show a serious violation of a fundamental right. we hold that plaintiffs need not exhaust their union remedies." 337 F.2d 216, 219.

See also, *Detroy v. American Guild of Variety Artists*, 286 F.2d 75 (2d Cir. 1961), *cert. denied*, 366 U.S. 929 (1961); *Harris v. International Longshoremen's Ass'n.; Local 1291*, 321 F.2d 801, 806 (3d Cir. 1963).

The decision whether the union member must exhaust his internal union remedies is not not made by the union:

> "It is for the *court* to determine, in the exercise of some discretion, whether or not the proviso is to be invoked." *Burris v. International Brotherhood of Teamsters*, 224 F. Supp. 277, 280 (W.D.N.C, 1963) (emphasis in original).

See also, *Detroy v. American Guild of Variety Artists, supra*, at 78; *Libutti v. DiBrizzi, supra*, at 219.

According to the words of the statute, the statute's purpose, and the cases, the court *may* allow a suit within four months in some circumstances. The only way a union member can discover whether the court will take his case is to file an action in the court. A union rule that requires members to avail themselves of internal procedure for four months would be valid; however, when the rule also provides for automatic expulsion in the event of violation, the member would be arbitrarily penalized for trying to obtain relief which the court might consider to be within the statute.

It would be contrary to the purposes of this enactment if a union were allowed to expel a member who is attempting only to take advantage of the rights secured for him by Congress. In most cases where there are union procedures, the member will be remitted to those remedies for four months; however, it was not the intention of Congress that the member be foreclosed from seeking juidicial assistance, which may be allowed in the exceptional case.

Pursuant to 29 U.S.C. § 411(b), I hold that Article XXVII, Section 1, of the I.B.E.W. Constitution is of no force or effect to the extent that it provides for the expulsion of a member because he brings a suit in court.

Considering the undisputed facts in this case, it appears that the plaintiffs were expelled from the union solely because they filed a suit in the District Court on September 6, 1963.

Upon this finding and for the reasons stated above, it is hereby ordered that the plaintiffs' motion for summary judgment as to liability is granted and that the defendants' motion to dismiss the complaint is denied; it is further ordered that a hearing regarding the relief that plaintiffs request be held on May 21, 1965, at 2:00 p.m.

Enter:

Bernard M. Decker
Judge

Date: May 7, 1965

IN THE
UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOHN J. RYAN, et al.,
Plaintiffs.
v.
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, etc., et al.,
Defendants.
No. 64 C 1238*

MEMORANDUM OPINION

This suit, for an injunction and damages, is being brought by three former members of the International Brotherhood of Electrical Workers (I.B.E.W.), Local Union #134 of the International Brotherhood of Electrical Workers (Local 134 and several individuals in their official capacities with either the I.E.B.W. or Local 134.

The complaint alleges that the plaintiffs were expelled from the I.B.E.W. and Local 134 in a manner which violates the plaintiffs' rights under Section 102 of the Labor Management Reporting and Disclosure Act of 1959, Public Law 86-257, 29 U.S.C. §§ 401, 402, 411 and 412. As alleged, the basis for the expulsions was violation of Article XXVII, Section 1 of the I.B.E.W. Constitution, which is a part of the by-laws of Local 134; this Article reads as follows:

> "Any member resorting to the courts for redress for any injustice which he may believe has been done him by the I.B.E.W. or any of its L.U.'s, must first make use of the process available to him, including any

* (Unreported)

appeal or appeals from any decision against him, which may be open to him within the I.B.E.W. and, failing to do so, he shall stand automatically expelled and without rights of any kind."

The plaintiffs allege that Article XXVII, Section 1, violates their rights under 29 U.S.C. § 411(a)(4), which provides, in part, the following:

"No labor organization shall limit the right of any member thereof to institute an action in any court . . .: Provided, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof. . . ."

29 U.S.C. 411(a)(5)(b) provides:

"Any provision of the constitution and by-laws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect."

The issue before the Court is the validity of Article XXVII, Section 1. The plaintiffs take the position that the Article cannot be used to expel them from the union because it violates their rights under 29 U.S.C. §§ 401 *et seq.* The defendants have moved to dismiss the complaint, arguing that the Article is valid; therefore, pleading expulsion under Article XXVII, Section 1, does not state a claim upon which relief could be granted. F.R.C.P. 12(b)(6).

The defendants contend that Article XXVII, Section 1, when read in conjunction with the statute, requires the plaintiffs to exhaust their internal union remedies for four months only; that the union rule is invalid only insofar as it can be violated by an extra-union proceeding after the four month period. On this basis, the defendants contend that Article XXVII, Section 1, is a valid and enforceable regulation.

On the other hand, the plaintiffs argue that Article XXVII, Section 1, is wholly invalid because, by its terms, it requires the plaintiffs to exhaust all of their internal remedies without limiting the time to four months. The plaintiffs contend that, since Article XXVII, Section 1, has not been amended so that it fits within the statutory language, the violation of a void by-law cannot be the basis for their expulsion.

I have examined the statute, the legislative history, and the cases, and am of the opinion that Article XXVII, Section 1, cannot be the basis for the expulsion of a member and is invalid; however, my reasons are other than those presented by the parties.

29 U.S.C. 411 is known as the "Bill of Rights." The purpose of this legislation is apparent: to protect certain rights of union members by providing the member with access to the courts for the redress of a violation of the rights which are secured. See 29 U.S.C. § 412. Nevertheless, it was thought appropriate to give the union a chance, through internal procedures, to resolve its own problems. See 2 NLRB, Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, page 1432 (Statement by Senator John F. Kennedy). Therefore, although one of the "rights" which the union member gained in Section 412 is the right to seek extra-union relief, that right is not absolute.

The four month period is not an unvarying jurisdictional limitation. The statute says that the union member "*may* be required to exhaust . . ." internal remedies. (Emphaiss added.) Situations can arise when the union member will be allowed to bring suit prior to the expiration of a four-month period; as Chief Judge Lumbard said in *Detroy v. American Guild of Variety Artists*, 286 F.2d 75 (2d Cir. 1961), *cert. den.* 366 U.S. 929 (1961):

> "If it is probable that the union will grant no award or that its award will be so speculative that court

> proceedings will be instituted even after the remedies are exhausted, not even the policy calling for exhaustion in order to conserve judicial resources applies." (At p. 80.)

See also, *Harris v. International Longshoremen's Assoc., Local 1291,* 321 F.2d 801, 806 (3d Cir. 1963).

The decision whether the union member must exhaust his internal union remedies is not made by the union:

> "It is for the *court* to determine, in the exercise of some discretion, whether or not the proviso is to be invoked." *Burris v. International Brotherhood of Teamsters.* 224 F.Supp. 277, 280 (W.D.N.C. 1963) (emphasis in original).

See also, *Detroy v. American Guild of Variety Artists, supra,* at 78.

According to the words of the statute, the statute's purpose, and the cases, the court *may* allow a suit within four months in some circumstances. The only way a union member can discover whether the court will take his case is to file an action in the court. A union rule that requires members to avail themselves of internal procedure for four months would be valid; however, when the rule also provides for automatic expulsion in the event of violation, the member would be arbitrarily penalized for trying to obtain relief which the court might consider to be within the statute.

It would be contrary to the purposes of this enactment if a union were allowed to expel a member who is attempting only to take advantage of the rights secured for him by Congress. In most cases where there are union procedures, the member will be remitted to those remedies for four months; however, it was not the intention of Congress that the member be foreclosed from seeking judicial assistance, which may be allowed in the exceptional case.

For the above reasons, the complaint does state a claim upon which relief could be granted.

The defendants' motion to dismiss the complaint is hereby denied; the defendants are given leave to file an answer or to otherwise plead within twenty days.

Enter:

Bernard M. Decker
United States District Judge

DATED: December 17, 1964.

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In the

Supreme Court of the United States

OCTOBER TERM, 1966.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, ET AL.,

Petitioners,

vs.

JOHN J. RYAN, THOMAS MONAGHAN and CLIFFORD BECK,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

WILLIAM S. GROTEFELD
One North La Salle Street
Chicago, Illinois 60602
Attorney for Respondents

Of Counsel:

RUFF AND GROTEFELD
JOHN J. REYNOLDS
One North La Salle Street
Chicago, Illinois 60602
ANdover 3-3890

The Scheffer Press, Inc.—ANdover 3-6850

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Respondents respectfully submit that Petitioners have failed to advance any special and important reason why this Court should grant the Writ. The Court of Appeals did not sanction any departure from the accepted and usual course of judicial procedures nor have they decided on a question of Federal Law which is so broad in scope that it should be settled by this court.

QUESTION PETITIONER PRESENTS FOR REVIEW

The Respondents submit to this honorable court that the question presented by the Petitioners is not the question involved in this suit, as is clearly indicated by both the District Court and Circuit Court of Appeals Opinions. The sole question presented is whether the provisions of Title 29 U.S.C., Sec. 411 (a) (4) and 411 (5) (b) render the constitutional provision of the International Brotherhood of Electrical Workers void and of no force and effect, when such provision provides for automatic expulsion from membership for a union member seeking redress to the courts without exhausting all internal appellate procedures, which necessarily will last more than four months and up to four years.

STATEMENT OF THE CASE

The Respondents submit that the Statement of the case as set out by the Petitioners is accurate, except that neither the Trial Board, the International Vice President nor the International President had any discretion with reference to the expulsion of the Respondents. To the contrary, the International President in his decision upholding the expulsion of the Respondents states (C.A. App. 77):

> "It is my conclusion that under our Constitution no course is open to me but to dismiss the appeals of the Appellants Clifford J. Beck, Thomas Monaghan and John J. Ryan."

REASONS FOR DENYING THE WRIT

The Circuit Court of Appeals and the District Court, contrary to Petitioners' contention, decided only one limited issue, the issue being that Article XXVII, Section 1 of the Constitution of the International Brotherhood of Electrical Workers, which was incorporated into the by-

laws of Local 134, was void and of no force and effect under the provisions of Title 29 U.S.C. Section 411 (a) (4) and 411 (5) (b).

The Opinion, therefore, pertains solely to the following IBEW constitutional provision:

> "Any member resorting to the courts for redress for any injustice which he may believe has been done him by the IBEW or any of its L.U.'s, must first make use of the process available to him, INCLUDING ANY APPEAL OR APPEALS FROM ANY DECISION AGAINST HIM, WHICH MAY BE OPEN TO HIM WITHIN THE IBEW AND, FAILING TO DO SO, HE SHALL STAND AUTOMATICALLY EXPELLED AND WITHOUT RIGHTS OF ANY KIND."

It will be noted from both the Memorandum Opinion of the lower court and the Opinion of the Court of Appeals that it is the automatic expulsion factor that is most abhorrent. It is further obvious from the language of the Opinion that the Court of Appeals is dealing solely with a particular provision of a particular constitution and interpreting that provision alone with reference to Section 411 (a) (4) and 411 (5) (b).

The court states (App. C *Infra* 10-A):

> "Thus, the issue for decision is, as it was for the district court, whether Article XXVII, Section 1 of the International constitution can properly be the basis for the union discipline here involved."

The court further states (App. C *Infra* 11-A):

> "The question before us, therefore, is whether the protected right of a union member to sue his union, or its officers, may be so subjected to appellate procedures and rules by the union constitution that a

member risks expulsion by merely seeking a court's determination that he has a case not subject to the regulations in the union constitution."

In addition, the court in rendering its decision states with great particularity as follows (App. C *Infra* 13-A):

> "We hold that the Union constitution provision, Section 1 of Article XXVII, as construed by the Union, is inconsistent with Section 101 (a) (4) of the LMRDA, 29 U.S.C. Section 411 (a) (4), and is of no force and effect under Section 101 (b) of the Act, 29 U.S.C. Section 411 (b), and that plaintiffs' expulsion, predicated solely upon their violation of that Union provision, i.e., for bringing suit to restrain Local 134 from arbitrating the dispute without resort to the Union internal remedies, is unlawful, and that the district court did not err in setting the expulsion aside."

It seems, therefore, quite obvious that the contention of Petitioners as to the far reaching consequences of this Opinion is merely an attempt by them to overcome their own failure to revise their constitutional provisions to conform with Section 411 (a) (4) and 411 (5) (b). The fact that many other international unions have amended their constitutions to conform with the statute is admitted by Petitioners in their Petition filed in this court.

ARGUMENT

THE COURT OF APPEALS DID NOT SANCTION ANY DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEDURES NOR DID IT DECIDE AN IMPORTANT QUESTION OF FEDERAL LAW.

The purpose of the Labor-Management Reporting and Disclosure Act, which became effective September 14, 1959, according to Title 29 U.S.C. Section 401 (c) is:

> "The enactment of this chapter is necessary to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants and their officers and representatives which distort and defeat the policies of the Labor-Management Relations Act of 1947."

All International labor unions as well as their subordinate local unions enact by-laws and Constitutions to regulate the internal mechanisms and functions of their respective bodies. In so doing they necessarily legislate the rights and responsibilities of their membership and officers. To this end the IBEW enacted and adopted an International Constitution. Local 134 of the IBEW incorporated certain provisions of the International Constitution into its By-laws. In particular, they incorporated all of the provisions of the IBEW Constitution which pertained to internal discipline and appeals from disciplinary proceedings throughout the network of local and international unions.

In particular, we are herein concerned with Article XXVII, Section 1:

"Any member resorting to the courts for redress for any injustice which he may believe has been done him by the IBEW or any of its L.U.'s must first make use of the process available to him, INCLUDING ANY APPEAL OR APPEALS FROM ANY DECISION AGAINST HIM, WHICH MAY BE OPEN TO HIM WITHIN THE IBEW AND, FAILING TO DO SO, HE SHALL STAND AUTOMATICALLY EXPELLED AND WITHOUT RIGHTS OF ANY KIND."

There is no question but that the Respondents were expelled from Local 134 under the provisions of this section. Therefore, it must be determined if this provision of the IBEW Constitution and Local 134 By-laws is lawful or void.

Title 29 U.S.C. Section 411 (a) (4) provides:

"Protection of the right to sue—No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative or legislative proceeding, or to petition the legislature or to communicate with any legislator: *Provided,* That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: *And provided further,* That no interested employer or employer association shall directly or indirectly finance, encourge or participate in, except as a party, any such action, proceeding, appearance or petition."

To determine if Article XXVII, Section 1 violates Section 411 (a) (4) an analysis of the appellate procedures of the IBEW Constitution is necessary. Section 1 requires automatic expulsion if *all* appellate remedies are not exhausted.

The appeals procedures of the IBEW are contained in the Affidavit of Russell H. Olson (C.A. App. 13, 17, 18, 20). These provisions require that a union member appeal from the Local Union to the International Vice President, then to the International President and then to the International Executive Council and finally to the International Convention. There is a time limitation for the appeals of 30 days after each decision is rendered by the responsible parties. In addition, the IBEW Constitution provides that the International Convention shall convene on the third Monday in September every four years.

It is, therefore, obvious that if a union member seeks redress to the courts prior to his final appeal to the International Convention, which may be four years later, he is automatically expelled under the provisions of Article XXVII, Section 1.

In addition to the subsequent wording of the statute in Section 411 (5) (b), it is the automatic expulsion feature of this provision that is abhorrent to the expressed intent of the statute and, indeed, was abhorrent to the lower court and the Court of Appeals. To sustain the provisions of Article XXVII, Section 1 would absolve and preclude the courts from exercising jurisdiction, authority and relief to any union member merely because a labor union did not wish its members to avail themselves of their constitutional prerogatives.

Even though the Petitioners believe that it is the sole power of a labor union to regulate these inherent rights

of its members, the courts have repeatedly held that they have a basic jurisdictional power to protect the rights of union members when the situation demands. Section 411 (a) (4) codifies and secures that right.

Not only is it impossible for a labor union through its Constitution or by-laws to usurp this power of the courts, it was not and could not lawfully be the intent of Section 411 (a) (4) to accomplish this result. The obvious reasons for these conclusions is the situation wherein the labor union by its Constitution or by-laws could prevent a member from remedying an irreparable wrong even though the wrong complained of was legally remedial under the law.

In their Petition the Petitioners lay great stress upon the fact that these Respondents did receive a series of fair hearings in their various appeals. The fairness of the hearings is not an issue in this case, since no matter whether the hearings were fair or unfair, under Article XXVII, Section 1, those officers hearing the appeals had no alternative but to expel them. Perhaps the greatest indication of this lack of authority to reverse the expulsion order is contained in the decision rendered by the International President:

> "It is my conclusion that under our Constitution no course is open to me but to dismiss the appeals of Appellants Clifford J. Beck, Thomas Monaghan and John J. Ryan." (App. 77).

Therefore, Article XXVII, Section 1 of the IBEW Constitution is void in that it is contrary to the expressed language and intent of Section 411 (a) (4).

In addition to the foregoing basis for a declaration of the invalidity of Article XXVII, Section 1, we must look only to the statute itself to see that a constitutional pro-

vision or by-law such as this is of no force and effect and, therefore, void. Title 29 U.S.C. Section 411 (5) (b) reads as follows:

> "Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect."

Both sections 411 (a) (4) and 411 (5) (b) pertain to regulations, by-laws and constitutional provisions of the labor unions, since the only method of establishing or limiting these rights as to union members would, of necessity, be by setting them out in the by-laws and Constitution.

A further indication that Section 411 (4) pertains directly to the Constitution and by-laws is the heading of Section 411, "Constitutions and By-laws of Labor Organizations."

From the reading of the Statute, which is indicative and determinative of the intention of the Congress, it is apparent that Section 411 of the Act pertains particularly to provisions in the Constitution and by-laws of labor unions.

Since Section 411 (5) (b) states that any provision of a Constitution or by-law which is inconsistent with any of the provisions of Section 411 is to be of no force or effect, any such provision is void.

Article XXVII, Section 4, the provision under which the plaintiffs were expelled from the union, provides that before a union member may resort to the courts for redress, he must:

"First make use of the process available to him, including *any* appeal or appeals from *any* decision against him which *may* be open to him within the IBEW."

Therefore, as indicated in the preceding portion of this Argument, in order to comply with Article XXVII, Section 1, and make use of ANY appeal or appeals, the member must, of necessity, have to wait for a period of more than four months and up to four years. The only possible way that a member of Local 134 of the IBEW could exhaust all internal appellate remedies within four months would be if the charge against him was initially preferred immediately prior to the International Convention.

The Respondents were discharged from Local 134 for a violation of Article XXVII, Section 1, in failing to exhaust *all internal* appellate procedures and not for failing to use those which would be available for four months.

Section 411 of The Act, which constitutes a congressional mandate, specifically states that any constitutional provisions that do not allow redress to the courts within a reasonable period, not to exceed four months, are of no force or effect and are void. The obvious congressional intention was to require labor unions to amend their Constitutions and by-laws to comply with this mandate. The IBEW and Local 134 had five years within which to amend their Constitution and By-laws to comply with The Act but have flagrantly flouted the legislative intention of the Congress in failing to amend their regulations to comply with The Act.

In conclusion, it would appear that the obvious intent of the Congress of the United States in enacting into law Section 411 (a) (4) and (5) (b) was to require unions to provide in their Constitutions and by-laws safeguards so

that union members could seek redress to the courts within a period of no longer than four months after they were charged with a violation of union regulations. It is not contended that these sections of The Act were intended to divest labor unions of their necessary prerogative of internal discipline but only to impose reasonable restrictions by allowing members to seek legal redress. In effect it was the intention of Congress to allow labor unions to retain the right of internal discipline but to limit this right by requiring that the union adopt an internal appellate procedure that could be exhausted within four months so that a member could seek redress to the courts within a reasonable time.

Each of these Respondents was expelled solely for a violation of Article XXVII, Section 1, the terms of which are expressly contrary to the indicated provisions of the Labor-Management Reporting and Disclosure Act of 1959 in that they require a member to exhaust internal appellate remedies for a period of more than four months. The Respondents, therefore, were discharged under constitutional provisions of the IBEW Constitution which are by their very nature violative of Section 411 (a) (4). Under Section 411 (5) (b) this constitutional provision is of no force or effect and void. The Respondents have been deprived of their livelihood and rights in Local 134 under an illegal provision of the IBEW Constitution and are entitled to immediate reinstatement.

CONCLUSION

It is respectfully submitted and clearly appears from the record before this court that the Court of Appeals did not sanction a departure from the usual and accepted course of judicial procedures and did not decide an important question of Federal Law of such magnitude as to warrant action by this court. It is respectfully submitted that the Petition for a Writ of Certiorari was improvidently filed and should be denied.

WILLIAM S. GROTEFELD
Attorney for Respondents

Of Counsel:

RUFF and GROTEFELD
JOHN J. REYNOLDS
One North La Salle Street
Chicago, Illinois 60602

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PETITIONERS' REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

LOUIS SHERMAN
1200 15th Street, N.W.
Washington, D.C.
LESTER ASHER
229 North LaSalle Street
Chicago, Illinois
BENJAMIN L. JACOBSON
CHARLES R. DONNENFELD
Attorneys for Petitioners

Of Counsel:
SHERMAN AND DUNN
1200 15th Street, N.W.
Washington, D.C.
ASHER, GREENFIELD, GUBBINS AND SEGALL
229 North LaSalle Street
Chicago, Illinois

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1. The court below ruled that, regardless of the reasonableness of hearing procedures in the union, no limitation could be placed by the union on a member's access to the courts because, in its view, the member is entitled to ascertain by judicial proceedings whether he is entitled to "immediate" relief. If this ruling of law were to stand, there would be no way to amend any international union constitution to require union members to exhaust hearing procedures within the union for the "four month period" authorized by the statute. Respondents' contention (Brief

of Respondents, p. 4) that this case involves only a rewriting of the IBEW Constitution is, therefore, without foundation.

2. The IBEW interpreted the constitutional provision here involved so as not to give force and effect to its "automatic" language, because of the provisions of the Landrum-Griffin Act. See Petition, p.5n.3. Respondents' bald assertion that it was the particular "automatic" language of the IBEW Constitution which was the basic factor in the decision below (Brief of Respondents, p. 3) is directly contradicted by the language of the decision of the Court of Appeals, which makes it clear that the holding is applicable to the constitutional provision "as construed by the union." Petition, App.C, p. 13-A.

3. In addition to misstating both the question presented and the effect of the decision below, Respondents have misquoted the Record. In ruling on Respondents' appeal from the imposition of local union discipline, the IBEW President pointed out that "The trial body . . . exercised its *discretion* in imposing this severe penalty" and that the President could not, "*under the circumstances of this case,* disagree with this." Record, pp. 76-77. (Emphasis added.) The President's decision then concluded as follows:

> "For all of the above reasons, after careful consideration of the record and all correspondence pertaining to this case, it is my conclusion that under our Constitution no course is open to me but to dismiss the appeals of Appellants Clifford J. Beck, Thomas Monaghan and John J. Ryan."

Respondents, by setting out the part of the above quoted sentence appearing after the second comma as a full sentence (Brief of Respondents, p. 2) and by omitting the

preceding two and one-half sentences have sought to convey the erroneous impression that the IBEW applied the constitutional provision "automatically."

LOUIS SHERMAN
1200 15th Street, N.W.
Washington, D.C.

LESTER ASHER
229 North LaSalle Street
Chicago, Illinois

BENJAMIN L. JACOBSON
CHARLES R. DONNENFELD
Attorneys for Petitioners

Of Counsel:
SHERMAN AND DUNN
1200 15th Street, N.W.
Washington, D.C.

ASHER, GREENFIELD, GUBBINS AND SEGALL
229 North LaSalle Street
Chicago, Illinois

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